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Attorneys for Defendant ARISTA NETWORKS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Case No. 5:14-cv-05344-BLF (NC)

Plaintiff,

V.

ARISTA NETWORKS, INC.,

**DEFENDANT ARISTA NETWORKS,
INC.'S ADMINISTRATIVE MOTION TO
FILE DOCUMENTS UNDER SEAL**

Defendant.

Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

DEFENDANT ARISTA NETWORKS, INC.'S ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL
Case No. 5:14-cv-05344-BLF (NC)

Pursuant to the Northern District of California's Civil Local Rules 7-11 and 79-5(d)-(e), Defendant Arista Networks, Inc. respectfully submits this administrative motion to file under seal certain documents and information submitted in support of Arista's Opening Brief re Analytic Dissection:

Because this filing relates to non-dispositive matters, the documents and information that the parties request to file under seal are *not* subject to a strong presumption of public access. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Rather, the "good cause" standard of Rule 26(c) of the Federal Rules of Civil Procedure applies to the material at issue here. *Id.* at 1179. Civil Local Rule 79-5 further requires that a party seeking to seal information and documents "establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law." Civil L.R. 79-5(b). As required, Arista's sealing requests are "narrowly tailored to seek sealing only of sealable material." *Id.*

Arista seeks to file under seal the following documents and portions of documents set forth in the table below. Exhibits 9 and 10 to the Declaration of Ryan Wong In Support of Defendant Arista Networks, Inc.'s Opening Brief re Analytic Dissection discuss and disclose non-public information regarding Cisco's expert Dr. Almeroth's review of Arista's highly confidential source code, and evidence relating to such source code. Good cause exists for sealing documents that describe or disclose confidential source code, because such materials can be filed under seal even under the more stringent test applied for dispositive motions, which requires compelling reasons. *See Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10, 2012). Exhibits 18, 20, and 22 to the Declaration of Ryan Wong In Support of Defendant Arista Networks, Inc.'s Opening Brief re Analytic Dissection also discuss and disclose non-public information regarding Arista's highly confidential source code, as well as confidential information relating to the development and development process of Arista EOS software, including details regarding how certain technologies were integrated into Arista's products. The Court has previously ordered portions of those documents to be filed under seal (as shown in the table below). *See* ECF 487 (Aug. 24, 2016 Sealing Order).

1 The rest of the documents listed in the chart below and sought to be filed under seal
 2 describe or contain material that the Court has previously ordered to be filed under seal, in
 3 connection with other filings in this case. That material has previously been designated as
 4 confidential or highly confidential by Cisco Systems, Inc. (“Cisco”) and third parties Dell,
 5 Juniper Networks, and HP Enterprise. *See* ECF 487 (Aug. 24, 2016 Sealing Order); ECF 490
 6 (Aug. 26, 2016 Sealing Order). Arista takes no position on whether sealing the documents and
 7 information designated confidential by Cisco or third parties is appropriate. Arista expects that
 8 Cisco and/or the third parties will file supporting declarations pursuant to Civil L.R. 79-5(e)(1) if
 9 they seek to keep any of this information under seal, if they believe it to be necessary in light of
 10 the Court’s prior rulings finding good cause for sealing this material. Arista files this
 11 administrative motion to afford the designating parties the opportunity to defend their
 12 confidentiality designations, as required by Civil Local Rule 79-5(e).

Document	Portions to Be Filed Under Seal	Party Claiming Confidentiality
Exhibit 9 to the Declaration of Ryan Wong In Support of Defendant Arista Networks, Inc.’s Opening Brief re Analytic Dissection (“Wong Declaration”) (Cisco Interrogatory Responses, Exhibit G)	Entire document. Contains and discusses Arista’s Highly Confidential Source Code Material.	Arista, Cisco
Exhibit 10 to the Wong Declaration (Cisco Interrogatory Responses, Exhibit H)	Entire document. Contains and discusses Arista’s Highly Confidential Source Code Material	Arista, Cisco
Exhibit 11 to the Wong Declaration (Compilation of Deposition Transcript Excerpts)	Pages 9:21-23 of the Li excerpt; pages 8:11-19 of the Liu excerpt. Previously filed under seal per the Court’s August 24, 2016 order (ECF 487) at 24.	Cisco

Document	Portions to Be Filed Under Seal	Party Claiming Confidentiality
Exhibit 13 to the Wong Declaration (Cisco document)	Entire document. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 21.	Cisco
Exhibit 14 to the Wong Declaration (Cisco document)	Entire document. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 21.	Cisco
Exhibit 15 to the Wong Declaration (Li Deposition Excerpts)	Pages 9:21-23; 152:8-20; 227:19-22; 236:22-24. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 18.	Cisco
Exhibit 16 to the Wong Declaration (March 31, 2016 Remaker Deposition Excerpts)	Pages 27:1-29:25; 38:2-45:25; 50:2-57:25; 62:1-73:24; 82:1-85:19. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 19.	Cisco
Exhibit 17 to the Wong Declaration	Entire document. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 20-21.	Cisco

Document	Portions to Be Filed Under Seal	Party Claiming Confidentiality
Exhibit 18 to the Wong Declaration (Sweeney Deposition Excerpts)	<p>Entire document.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 21.</p> <p>Discusses and discloses internal, non-public information regarding the development and development process of the Arista EOS software, including details regarding how certain technologies were integrated into Arista's products.</p>	Arista
Exhibit 20 to the Wong Declaration (Black Opening Expert Report)	<p>Portions previously ordered filed under seal: Paragraphs ¶¶ 298, 397, 519, 525, and 678(i); portions quoting or referencing deposition of Philip Kasten; highlighted portions of Paragraphs ¶¶ 120, 123-125, 132, 161, 433, 438, 448-459, 461-471, 478-482, 498, 500-502, 504, 508, 510, 514, 515, 570, 580, 636, 689-691, 696, 700 and footnotes 32, 35, 40, and 128.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 14, and August 26, 2016 order (ECF 490) at 2.</p> <p>Contains Arista confidential information at Paragraphs ¶¶ 397, 519, 525, and 678(i). Paragraph 397 discusses and discloses internal, non-public information regarding the development and development process of Arista EOS software, including details regarding how certain technologies were integrated into Arista's products. Paragraphs 519, 525, and 678(i) discuss and disclose non-public information regarding Dr. Black's review of highly confidential source code, and evidence relating to such source code.</p>	Arista, Cisco

Document	Portions to Be Filed Under Seal	Party Claiming Confidentiality
Exhibit 22 to the Wong Declaration (Black Rebuttal Expert Report)	<p>Paragraphs ¶¶ 148, 155, 156, 160–166, and 169–171; and 50–51, 55, 148, 155, 156, 159, 160, 165, and 170.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 22.</p> <p>Contains Arista confidential information at Paragraphs ¶¶ 148, 155, 156, 160–166, and 169–171, which discuss and disclose non-public information regarding both Dr. Black's and Dr. Almeroth's reviews of highly confidential source code, and evidence relating to such source code.</p>	Arista, Cisco
Exhibit 30 to the Wong Declaration (April 4, 2016 Lougheed Deposition Excerpts)	<p>Pages 259:15–260:22; 261:18–22; 267:4–295:1; 296:23–298:16, 346:18–374:18; 379:2–25.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 19–20.</p>	Cisco
Exhibit 32 to the Wong Declaration (Kasten (Juniper) Deposition Excerpts)	<p>Entire document.</p> <p>Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 2.</p>	Juniper
Exhibit 33 to the Wong Declaration (Dell Corporation Representative Deposition Excerpts)	<p>Pages 50:6; 54:12.</p> <p>Previously filed under seal per the Court's August 26, 2016 order (ECF 490) at 2.</p>	Dell
Exhibit 36 to the Wong Declaration (Liu Deposition Excerpts)	<p>Pages 167–172.</p> <p>Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at page 3.</p>	Cisco

Document	Portions to Be Filed Under Seal	Party Claiming Confidentiality
Exhibit 38 to the Wong Declaration (Black Supplemental Report)	Paragraphs 13, 23, 35, 59, 76, 78, 80, 84, 85, 98, 99, 100 and footnote 11. Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 2.	Cisco
Exhibit 39 to the Wong Declaration (September 16, 2016 Lougheed Deposition Excerpts)	Pages 506, 583-584, 587-588, and 626. Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 3.	Cisco
Exhibit 42 to the Wong Declaration (November 20, 2016 Lougheed Deposition Excerpts)	Pages 55:2-56:18, 95:9-99:14; 178:11-13. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 18.	Cisco
Exhibit 44 to the Wong Declaration (March 30, 2016 Remaker Deposition Excerpts)	Page 8:17-18. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 22.	Cisco
Exhibit 45 to the Wong Declaration (Patil Email)	Entire document. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 20.	Cisco

The Declaration of Ryan Wong in Support of Arista's Administrative Motion to File Documents Under Seal In Connection With Arista's Opening Brief re Analytic Dissection, filed contemporaneously herewith, attaches complete unredacted versions of each listed document submitted under seal.

1 Respectfully submitted,

2 Dated: November 8, 2016

KEKER & VAN NEST LLP

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4 By: /s/ Brian L. Ferrall
5 BRIAN L. FERRALL

6 Attorney for Defendant
7 ARISTA NETWORKS, INC.
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